

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x  
In re: :  
: Chapter 7  
DIRECT ACCESS PARTNERS, : Case No.  
LLC, : 15-11259 (MEW)  
: Debtor. :  
- - - - - x  
YANN GERON, Chapter 7 :  
Trustee of DIRECT : Adv. Pro. No.  
ACCESS PARTNERS, LLC, : 16-01058 (MEW)  
: Plaintiff, :  
v. :  
JAMES CRAIG, JOSEPH E. :  
FLORES DE MENESES, and :  
GERARD M. VISCI, :  
: Defendants. :  
- - - - - x

111 Broadway  
New York, New York

December 13, 2016  
10:05 a.m.

EXAMINATION BEFORE TRIAL of BRIAN RYNIKER,  
the Non-Party Witness, by The Respective  
Parties, in the above-entitled action, held at  
the above time and place, pursuant to  
Subpoena, and to the Federal Rules of Civil  
Procedure, taken before MARCI GLOTZER, a  
shorthand reporter and Notary Public within  
and for the State of New York.



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2 \$25 million amount, and prescribes that  
3 60 percent, which totals \$15,055,284.40  
4 belongs to the GMG participation, and the  
5 40 percent, which is \$10,036,856.26, belongs  
6 to the corporate participation.

7 Q. Again, coming back to my question  
8 with respect to disbursements made in 2009 as  
9 described on Exhibit 1, the K2 analysis, of  
10 the monies that you've described, just to  
11 crystalize the point, how were they able to  
12 fund the disbursements?

13 A. The additional cash flow that was  
14 generated by the Miami group for that year  
15 yielded 10 million. Part of those funds were  
16 used to cover corporate expenses.

17 Q. Would those corporate expenses  
18 include these disbursements to the employees?

19 A. Certainly.

20 MR. RYAN: Are the highlights  
21 part of the original document?

22 MR. JANEY: They are the  
23 original document.

24 Q. Looking at page 11 of Exhibit 1 --  
25 withdrawn.



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2 Mr. De Meneses, how much money is described  
3 as allocated or disbursed to him?

4 **A. \$998,432.**

5 Q. In viewing row 32, where Mr. Craig  
6 is identified, what disbursement is  
7 identified in connection with him?

8 **A. \$1,113,056.**

9 Q. Turning to page 17, viewing row 43,  
10 where Mr. Visci is identified, how much  
11 disbursement is identified in connection with  
12 him?

13 **A. \$530,798.**

14 Q. Based on the analysis that you  
15 undertook from a financial analysis point of  
16 view, what made the disbursements to these  
17 employees possible in 2010?

18 **A. The continued transactions that took**  
19 **place with the Miami group.**

20 MR. JANEY: Marking as  
21 Exhibit 3 a two-page spreadsheet  
22 identified as DAPYG015738.

23 (Whereupon, a document was marked  
24 as Exhibit 3, for identification, as of  
25 this date.)



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2 **expenditures and/or unknown losses.**

3 Q. What information does the net  
4 capital amount in the context of the FOCUS  
5 report provide?

6 **A. It's a modified or an adjusted**  
7 **equity value.**

8 Q. When you prepared this spreadsheet,  
9 then, FOCUS reports with, as it's labeled  
10 here, adjustments, is it fair to say that you  
11 prepared this report because there was a view  
12 that the existing FOCUS reports were  
13 incorrect?

14 **A. Certainly as we started to find that**  
15 **they were missing liability, we understand**  
16 **that the aggregated indebtedness would be**  
17 **wrong.**

18 Q. Based on our earlier discussion in  
19 your testimony, is it fair to say that the  
20 principal line items that were missing from  
21 the FOCUS reports were expenses and  
22 liabilities related to the Miami team?

23 **A. Yes.**

24 Q. This analysis here is an attempt to  
25 reconstitute expenses and liabilities to



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2 recalculate the net capital position of what  
3 it would have been on the FOCUS reports; is  
4 that correct?

5 A. Yeah. We believe our analysis -- in  
6 our analysis of the general ledger and what  
7 was believed to be the expenses of the Miami  
8 group, that there was missing liabilities and  
9 the expense related to those. So we wanted  
10 to bring them on to the monthly FOCUS report  
11 to show the reduction in the capital  
12 available.

13 Q. Viewing line eight -- I'm on page 1  
14 of the exhibit -- it's identified as "net  
15 capital before haircuts on securities  
16 positions." Do you see that there?

17 A. Yes.

18 Q. What are those numbers in line  
19 eight? What are those numbers?

20 A. Those are directly taken from the  
21 FOCUS reports as filed by Direct Access  
22 Partners.

23 Q. Viewing those numbers and taking  
24 them for what they are -- as an example, on  
25 12/31/2009, what would have been the net



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2 capital position reported on the DAP FOCUS  
3 reports?

4 A. The DAP FOCUS report for 12/31/09  
5 noted a \$13,737,688 net capital before  
6 haircuts.

7 Q. Your testimony was that the middle  
8 section here, CBIZ additional adjustments, is  
9 to reconstitute the actual liabilities and  
10 expenses of the firm; is that fair to say?

11 A. Yes.

12 Q. Viewing, then, say October, 2009,  
13 what was on the DAP FOCUS report in net  
14 capital?

15 A. Net capital before haircuts for  
16 October 31, 2009, was \$17,415,435.

17 Q. When I come down to row ten, that's  
18 also labeled net capital; correct?

19 A. Yes.

20 Q. That number is actually a negative  
21 number; correct?

22 A. Yes.

23 Q. Why is that number negative? What  
24 is that number?

25 A. Row eight was actually net capital



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2 before haircuts on security positions, where  
3 row ten is subsequent to those security  
4 positions, which is now just straight net  
5 capital.

6 Q. Just so that I understand, the 17.4  
7 million number in October of '09 which is off  
8 of the DAP FOCUS report shows substantial  
9 positive net capital; correct?

10 A. Yes.

11 Q. How does that net capital become  
12 negative?

13 MR. MCCABE: Just so I'm  
14 following, the negative being  
15 negative 673,546?

16 MR. JANEY: That's my question.  
17 I'm just trying to understand. There  
18 are a lot of numbers here.

19 A. There are two general adjustments  
20 that take place. There's the adjustment to  
21 net capital before haircuts, which relates to  
22 liabilities that are not on the books, and  
23 therefore expenses that are not on the books.  
24 There's a secondary adjustment related to --  
25 there's just one adjustment at that point in



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2 time which relates to the liabilities.

3 Q. What liabilities?

4 A. They were specifically, as of  
5 10/31/09, \$1,010,660 not recorded on the  
6 books and records related to the house  
7 reserve 2009 ETC. There's \$3,419,823 not  
8 recorded related to the house reserve 2009/10  
9 for Hurtado. There's \$10,305,198 due the GMG  
10 participation, which is their 60 percent. So  
11 there were three major items.

12 There is a direct -- there is a  
13 slight offset to these liabilities that  
14 weren't recorded. Based on our analysis we  
15 determined that payout and allocation the ETC  
16 was overly accrued by \$6,000. There was a  
17 slight offset.

18 Q. Just to be sure I understand, the  
19 liabilities that made in actuality the net  
20 capital figure to be negative are reflected  
21 and carried on the James Craig spreadsheets,  
22 but not reflected on the books of the  
23 company?

24 A. Correct.

25 Q. Going back to the K2 analysis, which





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2 is marked as Exhibit 1, and going to page 10  
3 of that exhibit, based on your analysis and  
4 viewing these distributions, what was, in  
5 reality, the financial condition of DAP,  
6 based on your analysis, going into October of  
7 2009?

8 A. Well, at the end of 2009 --

9 Q. I'm sorry. In October of 2009.

10 A. October 31, 2009, they had a  
11 negative net capital. And if they -- they  
12 didn't have available capital to cover the  
13 reserve necessary by FINRA at that point in  
14 time.

15 Q. When I look at your analysis for  
16 November and December, the net capital  
17 position, even on an adjusted basis with your  
18 adjustments, becomes positive again. Do you  
19 see that there?

20 A. Yes.

21 Q. Is that correct?

22 A. That's is correct. In October,  
23 2009, you have a negative net capital.  
24 November and December, the net capital  
25 increases and is positive as the month ends



1 **B. RYNIKER**

2 **there.**

3 Q. What is making it positive in  
4 November and December of '09?

5 **A. Based on the FOCUS reports, it was**  
6 **the other deductions, which is basically line**  
7 **items that were adding capital pursuant to**  
8 **the formula for the FOCUS report.**

9 Q. Do you recall what those line items  
10 were that were making it positive?

11 **A. I don't recall. If I had the FOCUS**  
12 **report, I might be able to.**

13 Q. For what year?

14 **A. For those two periods, I might be**  
15 **able to.**

16 Q. Turning to page 3 of your analysis,  
17 which is marked as Exhibit 4. This page  
18 describes activity in 2010; correct?

19 **A. Yes.**

20 Q. Based on your analysis in 2010, what  
21 is happening financially and from a net  
22 capital perspective with the company?

23 **A. Generally speaking, all of 2010 has**  
24 **an adjusted net capital that is negative.**

25 Q. When does the net capital become



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2 company have been able to make the \$7 million  
3 withdrawal in January, 2010, if the  
4 liabilities from the James Craig report had  
5 been put on the books?

6 A. No.

7 Q. Why not?

8 A. Our analysis lays out that there are  
9 amounts not noted on the books and records  
10 due GMG related to their 60/40 participation.  
11 Further, the books and records did not  
12 properly -- and let me go back. The FOCUS  
13 report did not properly account for the  
14 discretionary bonus that was noted to Hurtado  
15 of roughly 3.4 million. When you make those  
16 adjustments, the adjusted net capital before  
17 haircuts was roughly 1.5 million. And  
18 further down, once you take the haircuts in,  
19 it had a negative net capital of roughly 4.1  
20 million.

21 Q. An actual net capital in excess of  
22 \$4 million?

23 A. Yes.

24 Q. Drawing your attention to page 2 of  
25 the exhibit, that particular resolution is



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2 MR. JANEY: This exhibit, on  
3 page 5.

4 MR. RYAN: Page 5, Exhibit 4?

5 MR. JANEY: Yes.

6 MR. RYAN: Which is the amount  
7 are you referring to?

8 MR. JANEY: Exhibit 1 row 31,  
9 Joseph De Meneses is paid 2 million.

10 MR. RYAN: Okay.

11 **A. I cannot. I need to see the**  
12 **underlying work.**

13 Q. On page --

14 **A. Slow down. What you are looking at**  
15 **is a summary. Let me go back. I can't. I**  
16 **need to see the details behind the K2**  
17 **analysis.**

18 Q. Looking at page 7 of your analysis,  
19 Exhibit 4, what's happening, based on your  
20 analysis, financially here in 2012?

21 **A. It's very similar to what's in 2011.**  
22 **Our analysis shows there is negative capital**  
23 **for the entire period, the month ending for**  
24 **January 31, '12, through 12/31/12.**

25 Q. Viewing your analysis at least from



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2 January, 2010, through December of 2012, is  
3 it fair to say that for every single month,  
4 the broker dealer is in a negative income  
5 position?

6 A. Yes.

7 MR. JANEY: Those are my  
8 questions.

9 (Time noted: 1:56 p.m.)

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